



Title Conditions (Scotland) Act 2003

2003 asp 9

PART 1

REAL BURDENS: GENERAL

Extinction

18 Negative prescription

- (1) Subject to subsection (5) below, if—
 - (a) a real burden is breached to any extent; and
 - (b) during the period of five years beginning with the breach neither—
 - (i) a relevant claim; nor
 - (ii) a relevant acknowledgement,is made,then, subject to subsection (2) below, the burden shall, to the extent of the breach, be extinguished on the expiry of that period.
- (2) Subject to subsections (5) and (6) below, where, in relation to a real burden which consists of—
 - (a) a right of pre-emption, redemption or reversion; or
 - (b) any other type of option to acquire the burdened property,the owner of the burdened property fails to comply with an obligation to convey (or, as the case may be, to offer to convey) the property (or part of the property) and paragraph (b) of subsection (1) above is satisfied, the burden shall be extinguished in relation to the property (or part) on the expiry of the period mentioned in the said paragraph (b).
- (3) Sections 9 and 10 of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (which define the expressions “relevant claim” and “relevant acknowledgement” for the purposes of sections 6, 7 and 8A of that Act) shall apply for the purposes of subsections (1) and (2) above as those sections apply for the purposes of sections 6, 7 and 8A of that Act but subject to the following modifications—
 - (a) in each of sections 9 and 10 of that Act—
 - (i) subsection (2) shall not apply;

Status: This is the original version (as it was originally enacted).

- (ii) for any reference to an obligation there shall be substituted a reference to a real burden; and
 - (iii) for any reference to a creditor there shall be substituted a reference to any person by whom a real burden is enforceable;
 - (b) in section 9 of that Act, for the reference to a creditor in an obligation there shall be substituted a reference to any person by whom a real burden is enforceable; and
 - (c) in section 10 of that Act, for any reference to a debtor there shall be substituted a reference to any person against whom the real burden is enforceable.
- (4) Section 14 of the said Act of 1973 (which makes provision as respects the computation of prescriptive periods) shall apply for the purposes of subsections (1) and (2) above as that section applies for the purposes of Part I of that Act except that paragraph (a) of subsection (1) of that section shall for the purposes of those subsections be disregarded.
- (5) In relation to a breach occurring before the appointed day, subsections (1) and (2) above apply with the substitution in paragraph (b) of subsection (1), for the words “period of five years beginning with the breach”, of the words “appropriate period”.
- (6) In the case of a right of pre-emption constituted as a rural housing burden, subsection (2) above shall apply with the modification that for the words “the burden shall be extinguished in relation to the property (or part) on” there shall be substituted “it shall not be competent to commence any action in respect of that failure after”.
- (7) The reference, in subsection (5) above, to the “appropriate period” is to whichever first expires of—
 - (a) the period of five years beginning with the appointed day; and
 - (b) the period of twenty years beginning with the breach.